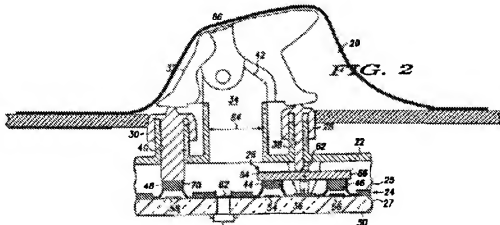


Remarks

In phone conference with Examiner, the Examiner noted that Examiner had incorrectly listed Wright (US 5,990,431) instead of Hoang (6,737,592) in the office action. Applicant also notes that Examiner has defined the claim terms “conformingly encloses” to include the arrangement shown in the drawings of present application. Although Applicant disagrees with Examiner about the correct interpretation of the term, in order to move prosecution forward, without admitting the correctness of the rejection. Applicant has amended claim 1 to ensure that claims preclude Examiner’s definition of the terms. Applicant had further added new claims 17-18 which also claim the present device making clear the cover claimed cannot be either the cover of Wright or Lui.

As noted in Applicant’s previous response, covering Hoang (‘592) with the cover of Wright (‘431) leads to a push-pull-switch as depicted below:



Which is created using Figure 2 of Hoang (‘592) with the cover of Wright (431). This cover renders the switch inoperable, because a user could not get their finger tip under the actuation projection to use the “pull” function of the switch. Further, such a cover does not meet the “conformingly a top and at least a portion of an underside of encloses the actuation projection” of claim 1, as best seen in Figure 2 of Wright.

In the current Office Action, examiner uses newly cited Liu (6,794,592) to make the same argument and rejection. However, Liu (‘592) has all of the same limitations as Wright. Liu does not have an “actuation projection asymmetrical with respect to an axis” and the cover of Liu does not “conformingly encloses a top and at least a portion of an underside of” to the symmetrical actuation projection that Liu does have.

Further, the covering member 5 of Liu ('592) is even less capable of "conformingly enclosing a top and at least a portion of an underside of" the actuation projection with its step pyramid form, best seen in Figure 1. The covering member 5 of Liu ('592) is molded in to that form and retains its shape in use and the steps allow the flexibility for use (see col. 3, lines 38-56). Therefore Liu teaches away from modifying the covering member to a smooth cover. The molded steps are specifically designed to PREVENT the covering member from folding under the actuation projection, as can be seen in Figures 2 and 3. Therefore the covering member of Liu, even more so that the cover of Wright, will not function as a cover for the switch of Hoang, contrary to Examiner's arguments in this office action and the first office action.

Both of Examiner's rejections of claims 1, Hoang in view of Wright AND Hoang in view of Liu result in a non-functional push-pull switch. As the Federal Circuit note in *McGinley v. Franklin Sports Inc.*, 262 F.3d 1339, 60 USPQ2d 1001, 1010 (Fed. Cir. 2001) "as a "useful general rule," that references that teach away cannot serve to create a prima facie case of obviousness. *In re Gurley*, 27 F.3d 551, 553, 31 USPQ2d 1130 (Fed. Cir. 1994). If references taken in combination would produce a "seemingly inoperative device," we have held that such references teach away from the combination and thus cannot serve as predicates for a prima facie case of obviousness. *In re Spinnoble*, 405 F.2d 578, 587, 160 USPQ 237, 244, 56 C.C.P.A. 823 (1969) (references teach away from combination if combination produces seemingly inoperative device); *see also In re Gordon*, 733 F.2d 900, 902, 221 USPQ 1125, 1127 (Fed. Cir. 1984) (inoperable modification teaches away)."

As note above, neither the cover of Wright nor the cover of Lui can be used with Hoang to create a functional cover that allows the user to actually use the push-pull rocker switch. Therefore Examiner's rejections are improper, and should be withdrawn.

The Examiner is respectfully requested to pass this application to issue.

Respectfully Submitted,



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